

REMARKS

The Examiner has rejected claims 1-12 under U.S.C. 102(b) as being anticipated by Knudson, U.S. Patent 5,845,432. The arguments presented in the previous office action are referenced.

Examiner stated in the December 20, 2004, rejection that “Knudson discloses a bracket having a junction (Fig. 1: 43) a lifting strut (32) attached to the juncture, a stabilizing strut (39) attached to the juncture, and a bracing strut (65) attached to the juncture.”

The Examiner’s 102(b) rejection would leave one to believe that the Applicant’s bracket and the Knudson bracket are interchangeable. The currently amended claim 1, clearly differentiates that the two are not interchangeable. When the Knudson bracket is mounted, the Knudson junction is substantially flush with the rear wall of the gutter. The weight of the gutter cover is supported by the Knudson lifting strut (32) and the Knudson stabilizing strut (39), which is interlocked with the front wall of the gutter, via support element 44. Knudson’s bracket supports both the gutter and the cover. Substantially, very little support is conveyed through the Knudson junction (43) to the lifting strut (32), as the support element 44 is proximal to the front of the gutter, and would be in compression, while the Knudson junction (43) is distally located on the rear wall. The Knudson bracing strut (65) supports the rear wall of the gutter by Knudson junction (43), and the front wall of the gutter by Knudson stabilizing strut (39). If hypothetically, the Knudson bracket was not used to support the gutter, but just to support the cover, then the weight of the gutter cover, through support element 44, is supported by the Knudson lifting strut (32) and the Knudson stabilizing strut (39), which is interlocked with the front wall of the gutter. The Knudson junction (43) would be under slight expansion, and the bracing strut (65) would be slightly pressed against the rear wall of the gutter and largely not stressed. The Knudson

bracing strut (65) would only marginally provide support to the Knudson lifting strut (32). In applicant's bracket, when mounted in the gutter, the junction is medial to the gutter and proximal to the front wall. The weight of the gutter cover is supported by the lifting strut 12, which coveys the weight to the junction 100. The junction 100 is medial to the gutter and proximal to the front wall. The weight of the gutter cover is largely born by the bracing strut 16, which rests on the bottom of the gutter trough and /or the front wall. The stabilizing strut 14, substantially acts to hold the bracket 10 upright. In contrast to Knudson, the stabilizing strut 16 bears none of the weight of the gutter, as the gutter is independently supported. In cases where additional support is needed for the cover, then a connecting element 200, can provide additional support. The connecting element 200 spans from the stabilizing strut 14 to the lifting strut 12. The bracing strut 16 is still required to support the junction 100, otherwise the junction would rotate distorting the front edge of the front wall of the gutter. In contrast to Knudson, when the bracket is mounted, the junction is medial to the gutter and proximal to the front wall. By having the junction closer to the front wall and the front edge of the cover there is a necessity for a bracing strut 16. Knudson's bracket has no counterpart to the bracing strut 16. The Knudson bracing strut (65) is erroneously identified by the Examiner as a bracing strut. In fact, Knudson identifies 65 and 64 as indentations in base 35 (Col. 4, lines 35 – 38). There is no counter part to Applicant's bracing strut 16, and the Applicant's bracket has no counter part to Knudson's base 35.

The 102(b) rejection is improper and should be withdraw, and the claims should be allowed. Knudson has a junction (Fig. 1: 43), a lifting strut (32) attached to the juncture, a stabilizing strut (39) attached to the juncture, and a base 35 attached to the juncture, where the juncture is a part of the base 35, and is located, so that when mounted, the juncture is against the rear wall of the gutter. Knudson also has a connecting element 44. Applicant has a junction 100, a lifting strut 12 attached to the juncture, a stabilizing strut 14 attached to the juncture, and at least one bracing strut 16 attached to the juncture, wherein the bracing strut is angled so that the distal lower end will contact the bottom of the gutter or

the front wall of the gutter or a combination thereof. The stabilizing strut and the bracing strut have lengths such that when the bracket is mounted, the junction will be positioned in the gutter substantially medial to the trough and proximal to the front rim of the gutter.

Claims 2-12 stand rejected. Claims 2-12 are dependent claims and have all the limitations of the parent claim, claim 1.

Claims 1 through 12 stand rejected under 35 U.S.C. §102(b) as being clearly anticipated by Knudson. As the Examiner is well aware, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987), *cited in*, M.P.E.P. § 2131. "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989). In addition, the elements must be arranged as required by the claim. M.P.E.P. § 2131, *citing*, *In re Bond*, 15 U.S.P.Q. 2d 1566 (Fed. Cir. 1990). Thus, if any feature taught by the claimed invention is not taught by the reference cited by the Examiner, then the claimed invention and the reference are patentably distinct. In such a case, a 35 USC § 102 rejection is improper. As discussed above, the Knudson reference teaches elements not claimed in independent claim 1, or in the dependent claims 2-12. A partial recitation of elements not taught by Knudson are 1) a bracing strut having a distal lower end and an upper end that is integral with the junction, wherein the at least one bracing strut is angled so that the distal lower end will contact the bottom of the gutter or the front wall of the gutter or a combination. 2) a bracket, that when mounted, has a junction that is positioned in the gutter substantially medial to the trough and proximal to the front rim of the gutter. Knudson teaches a base, not a bracing strut, and Knudson teaches a stabilizing strut that supports the gutter, but does not stabilize the junction. The Knudson's junction (43) is stabilized by a nail driven into the fascia board. As the Examiner is well aware, "a claim is anticipated only if each and every element as set forth in the claim is found, either

expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987), *cited in*, M.P.E.P. § 2131. "The identical invention must be shown in as complete detail as is contained in the... claim." *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989). In addition, the elements must be arranged as required by the claim. M.P.E.P. § 2131, *citing*, *In re Bond*, 15 U.S.P.Q. 2d 1566 (Fed. Cir. 1990). Thus, if any feature taught by the claimed invention is not taught by the reference cited by the Examiner, then the claimed invention and the reference are patentably distinct. Simply examining the figures of the two brackets affirms that the brackets are different. In such a case, a 35 USC § 102 rejection is improper.

Claims 13-15, and 18 are rejected under USC 1039a) as being unpatentable over 5,845,432 to Knudson, as stated in the previous office action.

Claim 13 (currently amended) reads, the bracket has a structure that lends itself to being formed by continuous extrusion, and cutting the bracket to the desired width. Examiner is well aware that if a bracket is to be continuously formed by extrusion, then it must be identical in the extruded axis. The advantage of a bracket with this symmetry is that savings can be realized in manufacture, and the width of the bracket can be custom cut. Applicant's invention meets this criteria. Knudson's invention does not. See Fig 9:147 and Fig 7:87. Furthermore, dependent claim 13 on depending on claim 1, has all the limitations of claim 1.

Claims 14, 15, and 18 depend on claim 13, which depends on claim 1. The dependent claims have all the limitations of the intervening claims.

Generally, "to establish *prima facie* obviousness of the claimed invention, all the cited limitations must be taught or suggested by the prior art". *In re Royka* 490 Fed. 2<sup>nd</sup> 981 (C.C.P.A., 1974). "A statement that modifications of the prior art to meet the claimed invention would have been well within the ordinary skill of the art at the time the claimed invention was made because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish *prima facie* case of obviousness without some objective reason to combine the teachings of the references." M.P.E.P. §2143.02, citing *Ex Parte Levengood*, 28 U.S.P.Q. 2<sup>nd</sup> 1300 (Bd. Pat. App., 1993). Todate, the Examiner has provided absolutely no objective reasoning whatsoever to support the claim of obviousness relating to the above cited dependent Claims. Indeed, the Examiner has only stated that in Col. 3, lines 6-8, Knudson teaches that the bracket could be formed by extrusion, and admits that Knudson does not teach cutting. The Examiner, at the time of his objection, obviously did not consider the value of having a bracket that could be individually sized by cutting when he stated on page 5, line 14, that it would be obvious for one skilled in the art "to cut excessive flashing from the bracket." The value is not in finishing a bracket, but in eliminating the need for individual extrusion molds, and de-molding in general. Continuous extrusion solves all these issues. Knudson doesn't teach this, as discussed above.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desired validity of the combination. M.P.E.P. §2143.01; *In re Mills*, 1916 Fed. 2<sup>nd</sup> 680, 16 U.S.P.Q. 2<sup>nd</sup> 1430 (Fed. Cir. 1990). There must be some objective support. The Examiner has neither cited nor stated any fact that the cited reference suggests the desirability of continuous extrusion and cutting. In fact, the Examiner has indicated a process (e.g., cutting off excess flashing) that could be employed that is distinctly counterproductive to the desired end-result. The Examiner, furthermore, has admitted that Knudson does not teach cutting. As this rejection is clearly improper, reconsideration thereof is hereby requested.

Claims 16 and 17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson in view of U.S. Patent 5,570,860 to Schoenherr. The arguments presented in the previous office action are referenced.

Claims 16 and 17 ultimately depend on claim 13, which depends on claim 1. The dependent claims have all the limitations of the intervening claims. Claims 1 and 13 have been exhaustively discussed, and because of the intervening limitations, claims 16 and 17 should be allowed. Furthermore, Schoenherr teaches a clip / bracket for hanging gutters, just like Knudson. Applicant's invention is not used to hang gutters, and has no elements that can be used to hang gutters. The reference would appear to be inappropriate as it is not suitable for fabrication using continuous extrusion, and there is no counter part to a stabilizing strut having a medial end. Neither Schoenherr nor Knudson teach a bracket suitable for attaching a cover to an existing gutter. The rejection is clearly improper, reconsideration thereof is hereby requested.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson. The Examiner states it would be obvious to extend the bracing strut downward far enough to contact the bottom of the gutter in order to increase the contacted surface area, and therefore provide stronger support for the gutter.

Applicant reminds the Examiner that the invented bracket does not support the gutter. The gutter supports the bracket. The claim should be allowed as the grounds for rejection do not apply to the pending invention.

The fees for filing the RCE are attached.

In considering this amendment, Applicant reminds the Examiner that a Petition to make Special was granted on the grounds that allowance of this application would result in a significant increase in sales. Potential commercial success is hereby submitted as an additional ground to allow this application.

In view of the foregoing amendment and these remarks, this application is now believed to be in condition for allowance, and such favorable action is respectfully requested on behalf of Applicant.

Respectfully submitted,



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